

SENATE BILL NO. 229

INTRODUCED BY J. LASLOVICH

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM HEALTH CARE DECISIONS ACT; AMENDING SECTIONS 50-9-101, 50-9-102, 50-9-103, 50-9-104, 50-9-105, 50-9-106, 50-9-107, 50-9-108, 50-9-111, 50-9-201, 50-9-202, 50-9-203, 50-9-204, 50-9-205, 50-9-206, 50-9-501, 50-9-502, 50-9-503, 50-9-504, 50-10-101, 50-10-103, 52-3-803, AND 61-5-301, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-9-101, MCA, is amended to read:

"50-9-101. Short title. This chapter may be cited as the ~~"Montana Rights of the Terminally Ill Act"~~ "Uniform Health Care Decisions Act"."

Section 2. Section 50-9-102, MCA, is amended to read:

"50-9-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Adult" means an individual who is at least 18 years of age.

(2) "Advance health care directive" means an individual instruction or a power of attorney for health care.

~~(1)(3)~~ (3) "Advanced practice registered nurse" means an individual who is licensed under Title 37, chapter 8, to practice professional nursing in this state and who has fulfilled the requirements of the board of nursing pursuant to 37-8-202 and 37-8-409.

(4) "Agent" means an individual designated in a power of attorney for health care to make a health care decision for the individual granting the power of attorney for health care.

~~(2)(5)~~ (5) "Attending advanced practice registered nurse" means the advanced practice registered nurse who is selected by or assigned to the patient and who has primary responsibility for the treatment and care of the patient.

~~(3) "Attending physician" means the physician selected by or assigned to the patient, who has primary responsibility for the treatment and care of the patient.~~

~~(4)(6)~~ (6) "Board" means the Montana state board of medical examiners.

(7) "Capacity" means an individual's ability to understand the significant benefits, risks, and alternatives

1 to proposed health care and to make and communicate a health care decision.

2 ~~(5) "Declaration" means a document executed in accordance with the requirements of 50-9-103.~~

3 ~~(6)(8)~~ "Department" means the department of public health and human services provided for in
4 2-15-2201.

5 ~~(7)(9)~~ "Emergency medical services personnel" means paid or volunteer firefighters, law enforcement
6 officers, first responders, emergency medical technicians, or other emergency services personnel acting within
7 the ordinary course of their professions.

8 (10) "Guardian" means a judicially appointed guardian or conservator having authority to make a health
9 care decision for an individual.

10 (11) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or otherwise
11 affect an individual's physical or mental condition.

12 (12) "Health care decision" means a decision made by an individual or the individual's agent, guardian,
13 or surrogate regarding the individual's health care, including:

14 (a) selection and discharge of health care providers and health care institutions;

15 (b) approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders
16 not to resuscitate; and

17 (c) directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health
18 care.

19 (13) "Health care institution" means an institution, facility, or agency licensed, certified, or otherwise
20 authorized or permitted by law to provide health care in the ordinary course of business.

21 ~~(8)(14)~~ "Health care provider" means a person who is licensed, certified, or otherwise authorized by the
22 laws of this state to administer health care in the ordinary course of business or practice of a profession.

23 (15) "Individual instruction" means an individual's direction concerning a health care decision for the
24 individual.

25 ~~(9)(16)~~ "Life-sustaining treatment" means any medical procedure or intervention that, when administered
26 ~~to a qualified patient,~~ serves only to prolong the dying process.

27 ~~(10) "Living will protocol" means a locally developed, communitywide method or a standardized, statewide~~
28 ~~method developed by the department and approved by the board, of providing palliative care to and withholding~~
29 ~~life-sustaining treatment from a qualified patient under 50-9-202 by emergency medical service personnel.~~

30 ~~(11)(17)~~ "Person" means an individual, corporation, business trust, estate, trust, partnership, association,

1 joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

2 ~~(12)~~(18) "Physician" means an individual licensed under Title 37, chapter 3, to practice medicine in this
3 state.

4 (19) "Power of attorney for health care" means the designation of an agent to make health care decisions
5 for the individual granting the power.

6 (20) "Primary physician" means a physician or a physician assistant acting pursuant to an authorization
7 under 37-20-403 designated by an individual or the individual's agent, guardian, or surrogate to have primary
8 responsibility for the individual's health care or, in the absence of a designation or if the designated physician or
9 physician assistant is not reasonably available, a physician or physician assistant who undertakes the
10 responsibility.

11 ~~(13)"Qualified patient" means a patient 18 years of age or older who has executed a declaration in~~
12 ~~accordance with this chapter and who has been determined by the attending physician or attending advanced~~
13 ~~practice registered nurse to be in a terminal condition.~~

14 (21) "Reasonably available" means readily able to be contacted without undue effort and willing and able
15 to act in a timely manner considering the urgency of the patient's health care needs.

16 ~~(14) "Reliable documentation" means a standardized, statewide identification card or form or a necklace~~
17 ~~or bracelet of uniform design, adopted by a written, formal understanding of the local community emergency~~
18 ~~medical services agencies and licensed hospice and home health agencies, that signifies and certifies that a valid~~
19 ~~and current declaration is on file and that the individual is a qualified patient.~~

20 ~~(15)~~(22) "State" means a state of the United States, the District of Columbia, the Commonwealth of
21 Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

22 (23) "Supervising health care provider" means the primary physician or attending advanced practice
23 registered nurse or, if there is no primary physician or attending advanced practice registered nurse or the primary
24 physician or attending advanced practice registered nurse is not reasonably available, the health care provider
25 who has undertaken primary responsibility for an individual's health care.

26 (24) "Surrogate" means an individual, other than a patient's agent or guardian, authorized under this
27 chapter to make a health care decision for the patient.

28 ~~(16)~~(25) "Terminal condition" means an incurable or irreversible condition that, without the administration
29 of life-sustaining treatment, will, in the opinion of the ~~attending~~ primary physician or attending advanced practice
30 registered nurse, result in death within a relatively short time."

Section 3. Section 50-9-103, MCA, is amended to read:

"50-9-103. ~~Declaration relating to use of life-sustaining treatment--designee~~ Advance health care directives -- designees. (1) (a) ~~An individual of sound mind and 18 years of age or older~~ adult or emancipated minor may execute at any time ~~a declaration governing the withholding or withdrawal of life-sustaining treatment~~ an advance health care directive and give an individual instruction. The individual instruction may be oral or written. The individual instruction may be limited to take effect only if a specified condition arises.

(b) ~~The declarant may designate another individual of sound mind and 18 years of age or older~~ An adult or emancipated minor may execute a power of attorney for health care, which may authorize the agent to make decisions governing the withholding or withdrawal of life-sustaining treatment any health care decision that the principal could have made while having capacity. ~~The declaration~~ power of attorney for health care must be in writing and signed by the declarant or another at the declarant's direction and must be witnessed by two individuals principal. The power of attorney for health care remains in effect notwithstanding the principal's later incapacity and may include individual instructions. ~~A health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with this chapter and is valid.~~

(c) Unless related to the principal by blood, marriage, or adoption, an agent may not be an owner, operator, or employee of a long-term care facility, as defined in 50-5-101, at which the principal is receiving health care.

(d) A written advance health care directive may include the individual's nomination of a guardian.

(2) ~~A declaration directing a physician or advanced practice registered nurse to withhold or withdraw life-sustaining treatment may, but need not, be in the following form:~~

DECLARATION

____ If I should have an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician or attending advanced practice registered nurse, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I direct my attending physician or attending advanced practice registered nurse, pursuant to the Montana Rights of the Terminally Ill Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary to my comfort or to alleviate pain.

____ Signed this ____ day of _____, ____.

____ Signature _____

1 _____ City, County, and State of Residence _____

2 _____ The declarant voluntarily signed this document in my presence.

3 _____ Witness _____

4 _____ Address _____

5 _____ Witness _____

6 _____ Address _____

7 _____ (3) A declaration that designates another individual to make decisions governing the withholding or
8 withdrawal of life-sustaining treatment may, but need not, be in the following form:

9 **DECLARATION**

10 _____ If I should have an incurable and irreversible condition that, without the administration of life-sustaining
11 treatment, will, in the opinion of my attending physician or attending advanced practice registered nurse, cause
12 my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment,
13 I appoint _____ or, if he or she is not reasonably available or is unwilling to serve, _____, to make
14 decisions on my behalf regarding withholding or withdrawal of treatment that only prolongs the process of dying
15 and is not necessary for my comfort or to alleviate pain, pursuant to the Montana Rights of the Terminally Ill Act.

16 _____ If the individual I have appointed is not reasonably available or is unwilling to serve, I direct my attending
17 physician or attending advanced practice registered nurse, pursuant to the Montana Rights of the Terminally Ill
18 Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary for my comfort
19 or to alleviate pain.

20 _____ Signed this _____ day of _____, ____.

21 _____ Signature _____

22 _____ City, County, and State of Residence _____

23 _____ The declarant voluntarily signed this document in my presence.

24 _____ Witness _____

25 _____ Address _____

26 _____ Witness _____

27 _____ Address _____

28 _____ Name and address of designee.

29 _____ Name _____

30 _____ Address _____

(4)(2) If the designation of an attorney-in-fact pursuant to 72-5-501 and 72-5-502, or the judicial appointment of an individual, contains written authorization to make decisions regarding the withholding or withdrawal of life-sustaining treatment, that designation or appointment constitutes, for the purposes of this part, ~~a declaration~~ an advance health care directive designating another individual to act for the ~~declarant~~ principal pursuant to subsection (1).

(3) A guardian shall comply with the ward's individual instructions and may not revoke the ward's advance health care directive unless the appointing court expressly authorizes the guardian to do so.

(4) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

(5) A health care decision made by a guardian for the ward is effective without judicial approval.

(5)(6) A health care provider who is furnished a copy of the declaration an advance health care directive or individual instruction shall make it a part of the declarant's principal's medical record and, if unwilling to comply with the declaration advance health care directive or individual instruction, shall promptly advise the declarant principal and any individual designated to act for the declarant principal promptly.

Section 4. Section 50-9-104, MCA, is amended to read:

"50-9-104. Revocation of ~~declaration~~ advance health care directive. (1) (a) ~~A declarant~~ An individual may revoke ~~a declaration at~~ all or part of an advance health care directive, other than the designation of an agent, at any time and in any manner, ~~without regard to mental or physical condition that communicates an intent to~~ revoke. A revocation is effective upon its communication to the ~~attending primary~~ attending primary physician, attending advanced practice registered nurse, or other health care provider by the ~~declarant principal~~ principal or a witness to the revocation.

(b) An individual may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(c) A health care provider, agent, guardian, surrogate or emergency medical services personnel witnessing who is informed of a revocation shall act upon the revocation and shall promptly communicate the revocation to the attending primary physician or attending advanced practice registered nurse at the earliest opportunity and to any health care institution at which the patient is receiving health care. A revocation communicated to a person other than the ~~attending primary~~ attending primary physician, attending advanced practice registered nurse, emergency medical services personnel, or health care provider is not effective unless the ~~attending primary~~ attending primary physician or attending advanced practice registered nurse is informed of it before the ~~qualified~~ qualified patient

1 is in need of life-sustaining treatment.

2 (2) The attending primary physician, attending advanced practice registered nurse, or other health care
3 provider shall make the revocation a part of the ~~declarant's~~ principal's medical record.

4 (3) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous
5 designation of a spouse as an agent unless otherwise specified in the decree or in a power of attorney for health
6 care.

7 (4) An advance health care directive that conflicts with an earlier advance health care directive revokes
8 the earlier advance health care directive to the extent of the conflict."

9
10 **Section 5.** Section 50-9-105, MCA, is amended to read:

11 **"50-9-105. When ~~declaration~~ directive operative.** (1) ~~A declaration~~ An advance health care directive
12 becomes operative when:

13 (a) it is communicated to the attending primary physician or attending advanced practice registered
14 nurse; and

15 (b) the ~~declarant~~ principal is determined by the attending primary physician or attending advanced
16 practice registered nurse to ~~be in a terminal condition and no longer able to make decisions regarding~~
17 ~~administration of life-sustaining treatment~~ lack capacity.

18 (2) Unless otherwise specified in a written advance health care directive, a determination that an
19 individual lacks or has recovered capacity, or that another condition exists that affects an individual instruction
20 or the authority of an agent, must be made by the primary physician or attending advanced practice registered
21 nurse.

22 (3) Unless otherwise specified in a power of attorney for health care, the authority of an agent becomes
23 effective only upon a determination that the principal lacks capacity and ceases to be effective upon a
24 determination that the principal has recovered capacity.

25 (4) An agent shall make a health care decision in accordance with the principal's individual instructions,
26 if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the health care
27 decision in accordance with the agent's determination of the principal's best interest. In determining the principal's
28 best interest, the agent shall consider the principal's personal values to the extent known to the agent.

29 (5) A health care decision made by an agent for a principal is effective without judicial approval.

30 (6) When the ~~declaration~~ advance health care directive becomes operative, the attending primary

1 physician or attending advanced practice registered nurse and other health care providers shall act in accordance
2 with its provisions and with the instructions of a designee under ~~50-9-103(1)~~ 50-9-103 or comply with the transfer
3 requirements of 50-9-203."

4
5 **Section 6.** Section 50-9-106, MCA, is amended to read:

6 **"50-9-106. Consent by others to withholding or withdrawal of treatment for health care decisions.**

7 ~~(1) If a written consent to the withholding or withdrawal of the treatment, witnessed by two individuals, is given~~
8 ~~to the attending physician or attending advanced practice registered nurse, the attending physician or attending~~
9 ~~advanced practice registered nurse may withhold or withdraw life-sustaining treatment from an individual who:~~

10 ~~—— (a) has been determined by the attending physician or attending advanced practice registered nurse to~~
11 ~~be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining~~
12 ~~treatment; and~~

13 ~~—— (b) has no effective declaration. (1) A surrogate may make a health care decision for a patient who is~~
14 ~~an adult or an emancipated minor if the patient has been determined by the primary physician or attending~~
15 ~~advanced practice registered nurse to lack capacity and if no agent or guardian has been appointed or the agent~~
16 ~~or guardian is not reasonably available.~~

17 ~~(2) The authority to consent or to withhold consent under subsection (1) may be exercised by the~~
18 ~~following individuals, in order of priority~~ An adult or an emancipated minor may designate any individual to act
19 as surrogate by personally informing the supervising health care provider. In the absence of a designation, or if
20 the designee is not reasonably available, any member of the following classes of the patient's family who is
21 reasonably available, in descending order of priority, may act as surrogate:

22 (a) the spouse of the individual, unless legally separated;

23 (b) an adult child of the individual ~~or, if there is more than one adult child, a majority of the adult children~~
24 ~~who are reasonably available for consultation;~~

25 (c) ~~the parents~~ a parent of the individual; or

26 (d) an adult sibling of the individual ~~or, if there is more than one adult sibling, a majority of the adult~~
27 ~~siblings who are reasonably available for consultation; or~~

28 ~~—— (e) the nearest other adult relative of the individual by blood or adoption who is reasonably available for~~
29 ~~consultation.~~

30 (3) If none of the individuals eligible to act as surrogate under subsection (2) are reasonably available,

1 an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal
2 values, and who is reasonably available may act as surrogate.

3 (4) A surrogate shall communicate the surrogate's assumption of authority as promptly as practicable
4 to the members of the patient's family specified in subsection (2) who can be readily contacted.

5 ~~(3)(5) If a class entitled to decide whether to consent is not reasonably available for consultation and~~
6 ~~competent to decide or if it declines to decide, the next class is authorized to decide. However, an equal division~~
7 ~~in a class does not authorize the next class to decide~~ more than one member of a class assumes authority to act
8 as surrogate and they do not agree on a health care decision and the supervising health care provider is informed
9 of the disagreement, the supervising health care provider shall comply with the health care decision of a majority
10 of the members of that class who have communicated their views to the supervising health care provider. If the
11 class is evenly divided concerning the health care decision and the supervising health care provider is informed
12 of the division, that class and all individuals having lower priority are disqualified from making the health care
13 decision.

14 (6) An individual at any time may disqualify another person, including a member of the individual's family,
15 from acting as the individual's surrogate by a signed writing or by personally informing the supervising health care
16 provider of the disqualification.

17 ~~(4) A decision to grant or withhold consent must be made in good faith. A consent is not valid if it conflicts~~
18 ~~with the expressed intention of the individual.~~

19 (7) A surrogate shall make a health care decision in accordance with the patient's individual instructions,
20 if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the health care
21 decision in accordance with the surrogate's determination of the patient's best interest. In determining the
22 patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the
23 surrogate.

24 ~~(5)(8)~~ A health care decision made by a surrogate for a patient is effective without judicial approval.

25 (9) Unless related to the patient by blood, marriage, or adoption, a surrogate may not be an owner,
26 operator, or employee of a long-term care facility, as defined in 50-5-101, at which the patient is receiving health
27 care.

28 (10) A supervising health care provider may require an individual claiming the right to act as surrogate
29 for a patient to provide a written declaration under penalty of perjury, stating facts and circumstances reasonably
30 sufficient to establish the claimed authority.

(11) A decision of the ~~attending primary~~ physician or attending advanced practice registered nurse acting in good faith that ~~a consent~~ an individual instruction is valid or invalid is conclusive.

~~(6)(12)~~ Life-sustaining treatment ~~cannot~~ may not be withheld or withdrawn pursuant to this section from an individual known to the ~~attending primary~~ physician or attending advanced practice registered nurse to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment."

Section 7. Section 50-9-107, MCA, is amended to read:

"50-9-107. When health care provider may presume validity of declaration directive. In the absence of knowledge to the contrary, a health care provider may assume that ~~a declaration~~ an advance health care directive complies with this chapter and is valid."

Section 8. Section 50-9-108, MCA, is amended to read:

"50-9-108. Effect of previous ~~declaration~~ advance health care directive. An instrument executed before October 1, 1991, that substantially complies with 50-9-103~~(4)~~ is effective under this chapter."

Section 9. Section 50-9-111, MCA, is amended to read:

"50-9-111. Recognition of ~~declarations~~ directives executed in other states. ~~A declaration~~ An advance health care directive executed in a manner substantially similar to 50-9-103 in another state and in compliance with the law of that state is effective for purposes of this chapter."

Section 10. Section 50-9-201, MCA, is amended to read:

"50-9-201. Recording determination of ~~terminal condition~~ capacity and content of ~~declaration~~ directive. ~~Upon determining that a declarant is in a terminal condition, the attending physician or attending advanced practice registered nurse who knows of a declaration~~ (1) A supervising health care provider who knows of the existence of an advance health care directive, a revocation of an advance health care directive, or a designation or disqualification of a surrogate shall promptly record that determination and the terms of the declaration its existence in the declarant's patient's medical record and, if it is in writing, shall request a copy. If a copy is furnished, the health care provider shall arrange for its maintenance in the medical record.

(2) A primary physician or attending advanced practice registered nurse who makes or is informed of

a determination that a patient lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the patient's medical record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.

(3) Before implementing a health care decision made for a patient, a supervising health care provider shall promptly communicate to the patient, if possible, the health care decision made and the identity of the person making the health care decision."

Section 11. Section 50-9-202, MCA, is amended to read:

"50-9-202. Treatment of ~~qualified~~ patients with advance health care directives. (1) (a) A qualified patient with an advance health care directive may make decisions regarding life-sustaining treatment so as long as the patient is able has capacity to do so.

(b) An individual is presumed to have capacity to make a health care decision, to give or revoke an advance health care directive, and to designate or disqualify a surrogate.

(2) Except as provided in subsections (3) and (4), a health care provider or health care institution providing care to a patient shall:

(a) comply with an individual instruction of the patient and with a reasonable interpretation of that individual instruction made by a person then authorized to make health care decisions for the patient; and

(b) comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the health care decision had been made by the patient while having capacity.

(3) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience. A health care institution may decline to comply with an individual instruction or health care decision if the individual instruction or health care decision is contrary to a policy of the health care institution that is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person authorized to make health care decisions for the patient.

(4) A health care provider or health care institution may decline to comply with an individual instruction or health care decision that requires medically ineffective health care or health care contrary to generally accepted health care standards applicable to the health care provider or health care institution.

(2)(5) This chapter does not affect the responsibility of the attending primary physician, attending

advanced practice registered nurse, or other health care provider to provide treatment, including nutrition and hydration, for a patient's comfort care or alleviation of pain unless an individual instruction or health care decision prevents the treatment.

~~(3)~~(6) Life-sustaining treatment cannot be withheld or withdrawn pursuant to ~~a declaration~~ an advance health care directive from an individual known to the ~~attending~~ primary physician or attending advanced practice registered nurse to be pregnant ~~so as~~ long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment.

(7) A health care provider or health care institution may not require or prohibit the execution or revocation of an advance health care directive as a condition for providing health care."

Section 12. Section 50-9-203, MCA, is amended to read:

"50-9-203. Transfer of patients. ~~An attending~~ A primary physician, attending advanced practice registered nurse, or other health care provider who is unwilling to comply with this chapter shall take all reasonable steps as promptly as practicable to transfer care of the ~~declarant~~ patient to another physician, advanced practice registered nurse, or health care provider who is willing to do so. ~~If the policies of a health care facility preclude compliance with the declaration of a qualified patient under this chapter, that facility shall take all reasonable steps to transfer the patient to a facility in which the provisions of this chapter can be carried out~~ A health care provider or health care institution that declines to comply with an individual instruction or health care decision shall:

(1) promptly inform the patient, if possible, and any person then authorized to make health care decisions for the patient;

(2) provide continuing care to the patient until a transfer is effected; and

(3) unless the patient or person authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or health care institution that is willing to comply with the individual instruction or health care decision."

Section 13. Section 50-9-204, MCA, is amended to read:

"50-9-204. Immunities. ~~(1) In the absence of actual notice of the revocation of a declaration, the following, while acting in accordance with the requirements of this chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:~~

~~—— (a) a physician or advanced practice registered nurse who causes the withholding or withdrawal of life-sustaining treatment from a qualified patient;~~

~~—— (b) a person who participates in the withholding or withdrawal of life-sustaining treatment under the direction or with the authorization of a physician or advanced practice registered nurse;~~

~~—— (c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining treatment under the direction of or with the authorization of a physician or advanced practice registered nurse or who on receipt of reliable documentation follow a living will protocol;~~

~~—— (d) emergency medical services personnel who proceed to provide life-sustaining treatment to a qualified patient pursuant to a revocation communicated to them; and~~

~~—— (e) a health care facility in which withholding or withdrawal occurs.~~

~~(2)(1)~~ A health care provider or health care institution acting in good faith whose action under this chapter is in accord with ~~reasonable medical~~ generally accepted health care standards applicable to the health care provider or health care institution is not subject to civil or criminal liability or discipline for unprofessional conduct with respect to that decision for:

(a) complying with a health care decision of a person apparently having authority to make a health care decision for a patient, including a health care decision to withhold or withdraw health care;

(b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or

(c) complying with an advance health care directive and assuming that the advance health care directive was valid when made and has not been revoked or terminated.

~~(3)(2)~~ A health care provider whose decision about the validity of consent under 50-9-106 is made in good faith is not subject to criminal or civil liability or discipline for unprofessional conduct with respect to that decision.

~~(4)(3)~~ An individual designated pursuant to ~~50-9-103(1)~~ 50-9-103 or an individual authorized to consent pursuant to 50-9-106, whose decision is made or consent is given in good faith pursuant to this chapter, is not subject to criminal or civil liability or discipline for unprofessional conduct with respect to that decision."

Section 14. Section 50-9-205, MCA, is amended to read:

"50-9-205. Effect on insurance -- patient's decision. (1) Death resulting from the withholding or withdrawal of life-sustaining treatment in accordance with this chapter does not constitute, for any purpose, a

1 suicide or homicide.

2 (2) The making of ~~a declaration~~ an advance health care directive pursuant to 50-9-103 does not affect
3 the sale, procurement, or issuance of any policy of life insurance or annuity, nor does it affect, impair, or modify
4 the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated by
5 the withholding or withdrawal of life-sustaining treatment from an insured, notwithstanding any term of the policy
6 to the contrary.

7 (3) A person may not prohibit or require the execution of ~~a declaration~~ an advance health care directive
8 as a condition for being insured for or receiving health care services.

9 (4) This chapter does not create a presumption concerning the intention of an individual who has revoked
10 or has not executed ~~a declaration~~ an advance health care directive with respect to the use, withholding, or
11 withdrawal of life-sustaining treatment in the event of a terminal condition.

12 (5) This chapter does not affect the right of a patient to make decisions regarding use of life-sustaining
13 treatment, ~~so as~~ as long as the patient is able to has the capacity to do so, or impair or supersede a right or
14 responsibility that any person has to effect the withholding or withdrawal of medical care.

15 (6) This chapter does not require a health care provider or health care institution to take action contrary
16 to ~~reasonable medical~~ generally accepted health care standards applicable to the health care provider or health
17 care institution.

18 (7) This chapter does not condone, authorize, or approve mercy killing, ~~or euthanasia, assisted suicide,~~
19 or the provision, withholding, or withdrawal of health care, to the extent prohibited by other laws of this state."

20

21 **Section 15.** Section 50-9-206, MCA, is amended to read:

22 **"50-9-206. Penalties.** (1) A health care provider ~~who willfully fails to transfer the care of a patient in~~
23 ~~accordance with 50-9-203 is guilty of a misdemeanor punishable by a fine not to exceed~~ or health care institution
24 that intentionally violates the provisions of this chapter is subject to liability to the aggrieved individual for
25 damages of \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both actual damages
26 resulting from the violation, whichever is greater, plus reasonable attorney fees.

27 (2) ~~A physician or advanced practice registered nurse who willfully fails to record the determination of~~
28 ~~terminal condition or the terms of a declaration in accordance with 50-9-201 is guilty of a misdemeanor~~
29 ~~punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.~~

30 (3)(2) An individual who purposely falsifies, forges, conceals, cancels, defaces, or obliterates the

~~declaration of another~~ an individual's advance health care directive or a revocation of an advance health care directive without the ~~declarant's individual's~~ consent or who ~~falsifies or forges a revocation of the declaration of another~~ coerces or fraudulently induces an individual to give, revoke, or not give an advance health care directive is ~~guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both~~ subject to liability to that individual for damages of \$2,500 or actual damages resulting from the action, whichever is greater, plus reasonable attorney fees.

~~(4) An individual who falsifies or forges the declaration of another individual or purposely conceals or withholds personal knowledge of a revocation as provided in 50-9-104 is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.~~

~~(5)(3) A person who requires or prohibits the execution of a declaration~~ an advance health care directive as a condition for being insured for or receiving health care service is ~~guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both~~ subject to liability to the aggrieved individual for damages of \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both actual damages resulting from the action, whichever is greater, plus reasonable attorney fees.

~~(6) A person who coerces or fraudulently induces an individual to execute a declaration is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.~~

~~(7)(4)~~ (4) The penalties provided in this section do not displace any sanction applicable under other law."

NEW SECTION. Section 16. Health care information. Unless otherwise specified in an advance health care directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

NEW SECTION. Section 17. Judicial relief. On petition of a patient, the patient's agent, guardian, or surrogate, a health care provider or health care institution involved with the patient's care, or an individual described in 50-9-106, a district court may enjoin or direct a health care decision or order other equitable relief. A proceeding under this section is governed by 72-5-408.

NEW SECTION. Section 18. Uniformity of application and construction. This chapter must be

1 applied and construed to effectuate its general purpose to make uniform the law with respect to the subject matter
2 of this chapter among states enacting it.

3
4 **NEW SECTION. Section 19. Optional form for advance health care directive.** The following form
5 may, but need not, be used to create an advance health care directive. This chapter governs the effect of this or
6 any other writing used to create an advance health care directive. An individual may complete or modify any part
7 of the following form:

8 ADVANCE HEALTH CARE DIRECTIVE

9 Explanation

10 You have the right to give instructions about your own health care. You also have the right to name
11 someone else to make health care decisions for you. This form lets you do either or both of these things. It also
12 lets you express your wishes regarding donation of organs and the designation of your primary physician or
13 attending advanced practice registered nurse. If you use this form, you may complete or modify any part of it. You
14 are free to use a different form.

15 Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as an
16 agent to make health care decisions for you if you become incapable of making your own decisions or if you want
17 someone else to make those decisions for you now even though you are still capable. You may also name an
18 alternate agent to act for you if your first choice is not willing, able, or reasonably available to make decisions for
19 you. Unless related to you, your agent may not be an owner, operator, or employee of a long-term care facility
20 at which you are receiving health care.

21 Unless the form that you sign limits the authority of your agent, your agent may make all health care
22 decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority
23 of your agent if you wish to rely on your agent for all health care decisions that may have to be made. If you
24 choose not to limit the authority of your agent, your agent will have the right to:

25 (1) consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or
26 otherwise affect a physical or mental condition;

27 (2) select or discharge health care providers and health care institutions;

28 (3) approve or disapprove diagnostic tests, surgical procedures, programs of medication, and orders not
29 to resuscitate; and

30 (4) direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms

1 of health care.

2 Part 2 of this form lets you give specific instructions about any aspect of your health care. Choices are
3 provided for you to express your wishes regarding the provision, withholding, or withdrawal of treatment to keep
4 you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief. Space
5 is also provided for you to add to the choices that you have made or for you to write out any additional wishes.

6 Part 3 of this form lets you express an intention to donate your body organs and tissues following your
7 death.

8 Part 4 of this form lets you designate a primary physician or advanced practice registered nurse to have
9 primary responsibility for your health care.

10 After completing this form, sign and date the form at the end. It is recommended but not required that you
11 request two other individuals to sign as witnesses. Give a copy of the signed and completed form to your primary
12 physician or advanced practice registered nurse, to any other health care providers that you may have, to any
13 health care institution at which you are receiving care, and to any health care agents whom you have named. You
14 should talk to the person whom you have named as an agent to make sure that the person understands your
15 wishes and is willing to take the responsibility.

16 You have the right to revoke this advance health care directive or replace this form at any time.

17 * * * * *

18 PART 1

19 POWER OF ATTORNEY FOR HEALTH CARE

20 (1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health care
21 decisions for me:

22 _____

23 (name of individual whom you choose as agent)

24 _____

25 (address) (city) (state) (zip code)

26 _____

27 (home phone) (work phone)

28 OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to
29 make a health care decision for me, I designate as my first alternate agent:

30 _____

1 (name of individual whom you choose as first alternate agent)

2 _____

3 (address) (city) (state) (zip code)

4 _____

5 (home phone) (work phone)

6 OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or
7 reasonably available to make a health care decision for me, I designate as my second alternate agent:

8 _____

9 (name of individual whom you choose as second alternate agent)

10 _____

11 (address) (city) (state) (zip code)

12 _____

13 (home phone) (work phone)

14 (2) AGENT'S AUTHORITY: My agent is authorized to make all health care decisions for me, including
15 decisions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care to
16 keep me alive, except as I state here:

17 _____

18 _____

19 _____

20 (Add additional sheets if needed.)

21 (3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when
22 my primary physician or attending advanced practice registered nurse determines that I am unable to make my
23 own health care decisions unless I mark the following box. If I mark this box [], my agent's authority to make
24 health care decisions for me takes effect immediately.

25 (4) AGENT'S OBLIGATION: My agent shall make health care decisions for me in accordance with this
26 power of attorney for health care, any instructions that I give in Part 2 of this form, and my other wishes to the
27 extent known to my agent. To the extent that my wishes are unknown, my agent shall make health care decisions
28 for me in accordance with what my agent determines to be in my best interest. In determining my best interest,
29 my agent shall consider my personal values to the extent known to my agent.

30 (5) NOMINATION OF GUARDIAN: If a guardian needs to be appointed for me by a court, I nominate the

agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording that you do not want.

(6) END-OF-LIFE DECISIONS: I direct that my health care providers and others involved in my health care provide, withhold, or withdraw treatment in accordance with the choice that I have marked below:

☐ (a) Choice Not To Prolong Life. I do not want my life to be prolonged if:

(i) I have an incurable and irreversible condition that will result in my death within a relatively short time;

(ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness; or

(iii) the likely risks and burdens of treatment would outweigh the expected benefits; or

☐ (b) Choice To Prolong Life. I want my life to be prolonged as long as possible within the limits of generally accepted health care standards.

(7) ARTIFICIAL NUTRITION AND HYDRATION: Artificial nutrition and hydration must be provided, withheld, or withdrawn in accordance with the choice that I have made in paragraph (6) unless I mark the following box. If I mark this box ☐, artificial nutrition and hydration must be provided regardless of my condition and regardless of the choice that I have made in paragraph (6).

(8) RELIEF FROM PAIN: Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

(9) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own or if you wish to add to the instructions that you have given above, you may do so here.) I direct that:

(Add additional sheets if needed.)

PART 3

DONATION OF ORGANS AT DEATH

(OPTIONAL)

(10) Upon my death (mark applicable box)

☐ (a) I give any needed organs, tissues, or parts; or☐ (b) I give only the following organs, tissues, or parts:

(c) My gift is for the following purposes (strike any of the following that you do not want):

(i) transplant;

(ii) therapy;

(iii) research;

(iv) education.

PART 4

PRIMARY PHYSICIAN

(OPTIONAL)

(11) I designate the following as my primary physician or attending advanced practice registered nurse:

(name of primary physician or advanced practice registered nurse)

(address) (city) (state) (zip code)

(phone)

OPTIONAL: If the person whom I have designated above is not willing, able, or reasonably available to act as my primary physician or attending advanced practice registered nurse, I designate the following person:

(name of physician or advanced practice registered nurse)

(address) (city) (state) (zip code)

(phone)

1 (12) EFFECT OF COPY: A copy of this form has the same effect as the original.

2 (13) SIGNATURES: Sign and date the form here:

3 _____

4 (date) (sign your name)

5 _____

6 (address) (print your name)

7 _____

8 (city) (state) (zip code)

9 (Optional) SIGNATURES OF WITNESSES:

10 First witness Second witness

11 _____

12 (print name) (print name)

13 _____

14 (address) (address)

15 _____

16 (city) (state) (zip code) (city) (state) (zip code)

17 _____

18 (signature of witness) (signature of witness)

19 _____

20 (date) (date)

21

22 NEW SECTION. **Section 20. Effect of copy.** A copy of a written advance health care directive,
23 revocation of an advance health care directive, or designation or disqualification of a surrogate has the same
24 effect as the original.

25

26 **Section 21.** Section 50-9-501, MCA, is amended to read:

27 **"50-9-501. Health Advance health care declaration directive registry -- website -- rulemaking.** (1)

28 The attorney general shall establish and maintain a an advance health care declaration directive registry.

29 (2) The registry must be accessible through a website maintained by the attorney general.

30 (3) The registry must be used to store ~~declarations~~ advance health care directives pertaining to

1 life-sustaining treatment made pursuant to 50-9-103 that are filed with the attorney general.

2 (4) The registry must be maintained in a secure database that is designed to provide authorized health
3 care providers with immediate access to the registry at all times.

4 (5) The attorney general may adopt rules to implement the creation and maintenance of ~~a~~ an advance
5 health care ~~declaration~~ directive registry and for the creation and maintenance of the statewide education and
6 outreach program created in 50-9-505."

7
8 **Section 22.** Section 50-9-502, MCA, is amended to read:

9 **"50-9-502. Health Advance health care declaration directive registry filing provisions -- special**
10 **revenue fund -- failure to file declaration directive or notify of revocation -- duty of health care providers**
11 **to access registry.** (1) An individual or a person designated by the individual may file with the attorney general,
12 for entry into the advance health care declaration directive registry, ~~a declaration~~ an advance health care directive
13 provided for in 50-9-103 that pertains to life-sustaining treatment.

14 (2) (a) The attorney general may accept gifts, grants, donations, bequests, and other forms of voluntary
15 contributions to support, promote, and maintain the registry.

16 (b) There is ~~a~~ an advance health care declaration directive account in the state special revenue fund.
17 Money received pursuant to subsection (2)(a) and any money transferred from the general fund to the advance
18 health care ~~declaration~~ directive registry must be deposited in the account and must be used by the attorney
19 general to create and maintain the advance health care declaration directive registry and to create and maintain
20 an education and outreach program for the public regarding advance health care planning and end-of-life health
21 care decisionmaking.

22 (3) (a) Failure to file the ~~declaration~~ advance health care directive with the attorney general does not
23 affect the validity of the ~~declaration~~ advance health care directive.

24 (b) Failure to notify the attorney general of a revocation of the ~~declaration~~ advance health care directive
25 made pursuant to 50-9-104; does not affect the validity of the revocation.

26 (4) A health care provider is not required to access the registry in order to determine if a ~~qualified~~ patient
27 has filed ~~a declaration~~ an advance health care directive with the attorney general."

28
29 **Section 23.** Section 50-9-503, MCA, is amended to read:

30 **"50-9-503. Entry or removal of declaration directive into advance health care declaration directive**

1 **registry --removal of declaration.** (1) Upon receipt of ~~a declaration~~ an advance health care directive pertaining
2 to life-sustaining treatment, the attorney general shall determine if the ~~declaration~~ advance health care directive
3 is in compliance with the provisions of 50-9-103. If the ~~declaration~~ advance health care directive is not in
4 compliance with the provisions of 50-9-103, the attorney general shall return the ~~declaration~~ advance health care
5 directive together with a statement that the ~~declaration~~ advance health care directive was not filed ~~due to~~ because
6 of its nonconformance with the requirements of 50-9-103.

7 (2) (a) If ~~a declaration~~ an advance health care directive is accepted for filing, the attorney general shall
8 create a digital copy of the ~~declaration~~ advance health care directive and enter it into the database of the advance
9 health care ~~declaration~~ directive registry.

10 (b) The attorney general shall assign a unique access code to each individual who files ~~a declaration~~
11 an advance health care directive that may be used by that individual or by a health care provider in a case in
12 which the individual ~~becomes a qualified patient to~~ is determined to lack capacity and the health care provider
13 must access the registry to view the filed ~~declaration~~ advance health care directive.

14 (c) (i) After entering the digital copy of the ~~declaration~~ advance health care directive in the registry, the
15 attorney general shall return to the individual filing the ~~declaration~~ advance health care directive the original
16 ~~declaration~~ advance health care directive along with two wallet-sized cards that indicate that a copy of the
17 ~~declaration~~ advance health care directive exists in the registry and that the name and access code on the cards
18 may be used to access the registry to view an electronic copy of the ~~declaration~~ advance health care directive.

19 (ii) (A) In addition to the materials provided to an individual filing ~~a declaration~~ an advance health care
20 directive under subsection (2)(c)(i), the attorney general shall include a form asking the individual filing the
21 ~~declaration~~ advance health care directive to indicate on the form the privacy level that the individual desires with
22 respect to accessing the ~~declaration~~ advance health care directive and asking the individual to return the form
23 to the attorney general.

24 (B) An individual shall choose between two privacy levels. The standard privacy level allows access by
25 the individual filing the ~~declaration~~ advance health care directive, appropriate health care providers, anyone with
26 the name and access code, and anyone with the social security number, birth date, and mother's maiden name
27 of the individual who filed the ~~declaration~~ advance health care directive. The higher privacy level allows access
28 only by the individual filing the ~~declaration~~ advance health care directive, appropriate health care providers, and
29 anyone with the name and access code. If a form indicating a choice of privacy level is not returned to the
30 attorney general, the attorney general shall use the standard privacy level in determining access to ~~a declaration~~

1 an advance health care directive.

2 (3) If the attorney general receives a notice of the revocation of ~~a declaration~~ an advance health care
3 directive that is contained in the advance health care declaration directive registry or is notified that a person who
4 is the subject of ~~a declaration~~ an advance health care directive filed in the registry is deceased, the attorney
5 general shall remove that ~~declaration~~ advance health care directive from the registry."

6
7 **Section 24.** Section 50-9-504, MCA, is amended to read:

8 **"50-9-504. Registry information -- confidentiality -- transfer of information.** (1) The advance health
9 care declaration directive registry must be designed to be accessible only by entering a name and access code
10 on the internet website maintained by the attorney general or by the use of a password issued pursuant to
11 subsection (3).

12 (2) Names and access codes are confidential and may not be disclosed to any person other than the
13 person who submitted the ~~declaration~~ advance health care directive, a person named in the ~~declaration~~ advance
14 health care directive, or a health care provider for whom the person named in the ~~declaration~~ advance health care
15 directive is a qualified patient.

16 (3) (a) The attorney general shall issue confidential passwords to ~~attending primary~~ physicians, attending
17 advanced practice registered nurses, supervising health care providers, and hospital medical records department
18 staff that allow them to search the advance health care declaration directive database for a qualified patient who
19 is unable to communicate health care choices.

20 (b) The attorney general shall establish by rule procedures for applying for and the issuance of
21 confidential passwords to those persons described in subsection (3)(a).

22 (4) At the request of a person who submitted ~~a declaration~~ an advance health care directive or who is
23 named in the ~~declaration~~ advance health care directive, the attorney general may transmit the information
24 received regarding the ~~declaration~~ advance health care directive to the registry system of another jurisdiction as
25 identified by the ~~requestor~~ requester."

26
27 **Section 25.** Section 50-10-101, MCA, is amended to read:

28 **"50-10-101. Definitions.** As used in this part, unless the context clearly requires otherwise, the following
29 definitions apply:

30 (1) "Advanced practice registered nurse" means an individual who is licensed under Title 37, chapter

8, to practice professional nursing in this state and who has fulfilled the requirements of the board of nursing pursuant to 37-8-202 and 37-8-409.

(2) "Attending advanced practice registered nurse" means the advanced practice registered nurse who is selected by or assigned to the patient and who has primary responsibility for the treatment and care of the patient.

~~(3) "Attending physician" has the meaning provided in 50-9-102.~~

~~(4)~~(3) "Board" means the state board of medical examiners.

~~(5)~~(4) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(6)~~(5) "DNR identification" means a standardized identification card, form, necklace, or bracelet of uniform size and design, approved by the department, that signifies that the possessor ~~is a qualified patient, as defined in 50-9-102~~ has an advance health care directive and lacks capacity, as defined in 50-9-102, or that the possessor's attending primary physician or attending advanced practice registered nurse has issued a do not resuscitate order for the possessor and has documented the grounds for the order in the possessor's medical file.

~~(7)~~(6) "Do not resuscitate order" means a directive from a licensed physician or advanced practice registered nurse that emergency life-sustaining procedures should not be administered to a particular person.

~~(8)~~(7) "Do not resuscitate protocol" means a standardized method of procedure, approved by the board and adopted in the rules of the department, for the withholding of emergency life-sustaining procedures by physicians, advanced practice registered nurses, and emergency medical services personnel.

~~(9)~~(8) "Emergency medical services personnel" has the meaning provided in 50-9-102.

~~(10)~~(9) "Health care facility" has the meaning provided in 50-5-101 and includes a public health center as defined in 7-34-2102.

~~(11)~~(10) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation.

~~(12)~~(11) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state.

(12) "Primary physician" means a physician designated by an individual or the individual's agent, guardian, or surrogate, as defined in 50-9-102, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility."

1

2 **Section 26.** Section 50-10-103, MCA, is amended to read:

3 **"50-10-103. Adherence to do not resuscitate protocol -- transfer of patients.** (1) Emergency medical
4 services personnel, other than physicians or advanced practice registered nurses, shall comply with the do not
5 resuscitate protocol when presented with either do not resuscitate identification, an oral do not resuscitate order
6 issued directly by a physician or an advanced practice registered nurse, or a written do not resuscitate order
7 entered on a form prescribed by the department.

8 (2) ~~An attending~~ A primary physician, an attending advanced practice registered nurse, or a health care
9 facility unwilling or unable to comply with the do not resuscitate protocol shall take all reasonable steps to transfer
10 a person possessing DNR identification to another physician or advanced practice registered nurse or to a health
11 care facility in which the do not resuscitate protocol will be followed."

12

13 **Section 27.** Section 52-3-803, MCA, is amended to read:

14 **"52-3-803. Definitions.** As used in this part, the following definitions apply:

15 (1) "Abuse" means:

16 (a) the infliction of physical or mental injury; or

17 (b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental
18 health of an older person or a person with a developmental disability without lawful authority. ~~A declaration~~ An
19 advance health care directive made pursuant to 50-9-103 constitutes lawful authority.

20 (2) "Department" means the department of public health and human services provided for in 2-15-2201.

21 (3) "Exploitation" means:

22 (a) the unreasonable use of an older person or a person with a developmental disability or of a power
23 of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental
24 disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or
25 possession of or interest in the person's money, assets, or property by means of deception, duress, menace,
26 fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person
27 with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money,
28 assets, or property;

29 (b) an act taken by a person who has the trust and confidence of an older person or a person with a
30 developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit,

1 or possession of or interest in the person's money, assets, or property by means of deception, duress, menace,
2 fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person
3 with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money,
4 assets, or property;

5 (c) the unreasonable use of an older person or a person with a developmental disability or of a power
6 of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental
7 disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert
8 to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property
9 by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of
10 permanently depriving the older person or person with a developmental disability of the ownership, use, benefit,
11 or possession of the person's money, assets, or property.

12 (4) "Incapacitated person" has the meaning given in 72-5-101.

13 (5) "Long-term care facility" means a facility defined in 50-5-101.

14 (6) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or
15 psychological functioning or well-being.

16 (7) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual
17 obligation for caring for an older person or a person with a developmental disability or who has voluntarily
18 assumed responsibility for the person's care, including an employee of a public or private residential institution,
19 facility, home, or agency, to provide food, shelter, clothing, or services necessary to maintain the physical or
20 mental health of the older person or the person with a developmental disability.

21 (8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under
22 52-3-825(2) or (3), the person 60 years of age or older must be unable to provide personal protection from abuse,
23 sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or
24 dependencies brought about by advanced age.

25 (9) "Person with a developmental disability" means a person 18 years of age or older who has a
26 developmental disability, as defined in 53-20-102.

27 (10) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily
28 organ or function.

29 (11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
30 indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."

Section 28. Section 61-5-301, MCA, is amended to read:

~~"61-5-301. Indication on driver's license of intent to make anatomical gift or of living will declaration~~ advance health care directive. (1) The department of justice shall provide on each driver's license spaces for indicating when the licensee has:

(a) executed a document under 72-17-201 of intent to make a gift of all or part of the driver's body under the Uniform Anatomical Gift Act; or

(b) executed a declaration an advance health care directive under 50-9-103 relating to the use of life-sustaining treatment.

(2) The department shall provide each applicant, at the time of application for a new driver's license or for a renewal, printed information calling the applicant's attention to the provisions of this section. Each applicant must be asked orally if the applicant wishes to make an anatomical gift and if the applicant has executed the declaration advance health care directive under 50-9-103 relating to the use of life-sustaining treatment.

(3) Each applicant must be given an opportunity to indicate in the spaces provided under subsection (1) the applicant's intent to make an anatomical gift or that the applicant has executed the ~~declaration~~ advance health care directive under 50-9-103 relating to the use of life-sustaining treatment.

(4) The department shall issue to each applicant who indicates an intent to make an anatomical gift a statement that, when signed by the licensee in the manner prescribed in 72-17-201, constitutes a document of anatomical gift. This statement must be printed on a sticker that the donor may attach permanently to the back of the donor's driver's license.

(5) The department shall electronically transfer the information of all persons who volunteer, upon application for a driver's license or an identification card, to donate organs or tissue to the organ and tissue donation registry created in 72-17-105 and 72-17-106 and any subsequent changes to the applicant's donor status."

- END -